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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,574	10/16/2003	Selbourne S. Witter	23201.00	7177

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EXAMINER

HAYES, BRET C

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

61c

Office Action Summary	Application No. 10/685,574	Applicant(s) WITTER ET AL.	
	Examiner Bret C Hayes	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 6-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6-19 is/are rejected.
- 7) ☒ Claim(s) 1,9 and 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Objections

1. Claims 1 and 17 are objected to because of the following informalities: both claims, lines 2 and 4, respectively, “unitary”. Examiner suggests “monolithic” instead – in the ‘cast as a single piece’ sense, and not the ‘huge’ or ‘massive’ sense; and claim 9 is objected to because of the following informalities: line 1, “hangar” should be --hanger--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The rejections under 112, 2nd of the previous office action are hereby withdrawn. Although claims 1 and 16 still include the “whereby” clause, examiner was only attempting to draw attention to the cited case law regarding such usage, namely, *In re Mason*, 114 USPQ 127, 44 CCPA 937 (1957). The other claims have been amended to overcome the rejections.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 6 depends erroneously on canceled claim 5. Since the claim could depend on either of claims 1 or 4, examiner cannot determine the metes and bounds of the claim. However, for purposes of examination, claim 6 will depend on claim 1.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 4, 6, 7 and 9 – 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Nos. 5,018,480 to Goldman et al. (Goldman) in view of 6,684,818 B2 to Willinger et al. (Willinger).

8. Re – claim 1, Goldman discloses the invention substantially as claimed including a cylindrical shaft 1 of monolithic construction having two opposing ends, the shaft 1 having a perching surface circumferentially extending between the opposing ends and a plurality of longitudinal grooves being disposed in an irregular pattern of parallel rows circumferentially encircling the entire perching surface to simulate a natural tree branch. However, Goldman does not disclose an abrasive coating disposed about a portion of the perching surface, wherein the coating comprises a resin and sand. Willinger teaches an abrasive coating comprising an adhesive 110 and a gritty material 120 in the same field of endeavor for the purpose of duplicating the healthy, stimulative effects of expensive concrete and sand perches at a tremendously reduced weight and cost. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goldman to include the abrasive coating as taught by Willinger in order to duplicate healthy, stimulative effects. As pertains to the material selection, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select resin and sand, since it has been held to be within the general

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skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

9. Re – claim 4, Willinger further teaches the abrasive coating encircling the perching surface. See Fig. 2, for example.

10. Re – claim 6, see claim 1.

11. Re – claim 7, Willinger further teaches the shaft being hollow, see claim 1, for example.

12. Re – claim 9, Willinger further teaches a hanger assembly extending from at least one of the opposing ends of the shaft for mounting to a support. Goldman in view of Willinger discloses the claimed invention except for a hanger bolt. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select a hanger bolt, since the equivalence of a hanger bolt and the hanger assembly taught by Willinger for their use in the perch hanging art and the selection of any known equivalents to a hanger bolt would be within the level of ordinary skill in the art.

13. Re – claim 10 and 14, Goldman in view of Willinger discloses the claimed invention except for the choice of materials. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select these materials, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

14. Re – claim 11, since Willinger teaches a coating, and since a coating is a finishing, protective or enclosing layer, Willinger would further teach the cylindrical shell as claimed.

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15. Re – claim 12, since Willinger teaches the coating being disposed about the entirety of the shaft, this would include the center portion as claimed.

16. Re – claim 13, Goldman in view of Willinger discloses the claimed invention except for the coating being spirally wound around the shaft. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wind the coating spirally around the shaft, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

17. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman in view of Willinger as applied above, further in view of 5,511,512 to Pintavalli et al. (Pintavalli).

18. Goldman in view of Willinger discloses the invention substantially as claimed as applied above. However, Goldman in view of Willinger does not disclose at least one end cap.

Pintavalli teaches at least one end cap 64 in the same field of endeavor for the purpose of protecting the ends of shafts 52. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Goldman in view of Willinger to include an end cap in order to protect the end of the shaft.

19. Claims 15 – 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldman in view of Willinger, further in view of Des. 391,691 to Edelbeck et al. (Edelbeck).

20. Re – claims 15, 17 and 19, Goldman in view of Willinger discloses the invention substantially as claimed as applied above. However, Goldman in view of Willinger does not disclose a ladder comprising a plurality of the perches as claimed. Edelbeck teaches a bird perch ladder in the same field of endeavor for the purpose of allowing a bird to climb. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further

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modify Goldman in view of Willinger to include the perches in a ladder as taught by Edelbeck in order to allow a bird to climb.

21. Re – claims 16 and 18, Goldman in view of Willinger, further in view of Edelbeck discloses the invention substantially as claimed as applied above. Edelbeck further teaches rungs of differing shapes and sizes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the different diameters as claimed.

Response to Arguments

22. Applicant's arguments with respect to claims 1, 4 and 6 – 19 have been considered but are moot in view of the new ground(s) of rejection.

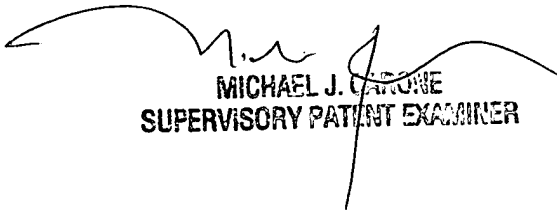
Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

10/1/04


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER